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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/596,195	06/17/2000	JASON R. WILCOX	1018.084US1	1771
27792	7590	11/24/2003	EXAMINER	
MICROSOFT CORPORATION LAW OFFICES OF RONALD M. ANDERSON 600 108TH AVENUE N.E., SUITE 507 BELLEVUE, WA 98004			DURAN, ARTHUR D	
			ART UNIT	PAPER NUMBER
			3622	

DATE MAILED: 11/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/596,195

Applicant(s)

WILCOX ET AL.

Examiner

Arthur Duran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-21 have been examined.

Response to Amendment

2. The Amendment filed on 11/7/03 is insufficient to overcome the Brown, Herz, and Conley references.

The Amendment filed on 11/7/03 is sufficient to overcome the 35 USC 101 Rejection of the prior action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 8, 13, and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (6,026,368) in view of Herz (6,029,195).

Claims 8, 13, and 18-21: Brown discloses a method for providing content and advertising information to a targeted set of viewers. Brown further discloses that content locations (websites) and site hosts can be targeted for the content (col 3, lines 45-62 and col 23, lines 18-26). Brown further discloses constructing sub item slot groups, each sub group having item slots, each item slot initially unfilled and able to be filled by an item (col 9, lines 15-52),

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constructing item slot groups, each group having at least one sub item slot group and having item slots equal to a total number of item slots of the at least one sub item slot group the group encompasses, each item slot initially unfilled and able to be filled by an item (col 9, lines 15-52), constructing meta item slot groups, each meta group having at least one item slot group and having item slots equal to a total number of item slots of the at least one item slot group the meta group encompasses, each item slot initially unfilled and able to be filled by an item (col 9, lines 15-52), allocating items of a first type over the item slots of the meta item slot groups that are unfilled by matching characteristics of the item to characteristics of the meta item slot group, such that allocating an item to an item slot fills the item slot with the item (col 10, lines 24-40), allocating items of a second type over the item slots of the meta item slot groups that are unfilled, the item slots of the item slot groups that are unfilled, and the item slots of the sub item slot groups that are unfilled, by matching characteristics of the items to characteristics of the sub item slot groups, such that allocating an item to an item slot fills the item slot with the item (col 10, lines 24-40), and allocating items of the first type over the item slots of the item slot groups that are unfilled and the item slots of the sub item slot groups that are unfilled, such that allocating an item to an item slot fills the item slot with the item (col 10, lines 24-40).

Brown further discloses that different and simultaneous queues are created for different types or categories, that these queues are formed based on rules and priorities, and also that these queues can be combined to form one main queue (col 17, lines 30-55; col 5, lines 40-49; col 3, line 62-col 4, line 15). Brown discloses that play lists can be constructed according to predetermined rules and definitions (col 2, lines 1-5; col 2, lines 15-28). Brown further discloses that sets of priority queues are generated (col 5, lines 56-60). The Merriam-Webster Online

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Dictionary (www.m-w.com) states that a set is, " 2 : a number of things of the same kind that belong or are used together." Hence, it is inherent to a set that a set has a limited number of items.

Brown further discloses that a specific number of segments is predetermined and then returned in response to the reception of a playlist (col 17, lines 24-29).

Brown further discloses that the analyst creates and controls all aspects of what and how target objects will be targeted (col 13, lines 19-26) and that a variety of content segments are available to select to fill these target objects (col 13, lines 19-26).

Brown further discloses that there are folders for the different types of target entities and also folders of the available items to fill those target entities (col 13, line 65-col 14, line 12). Brown further discloses that content items can be selected to fill empty content slots (col 14, lines 9-12).

Brown further discloses that target object slots are filled and that content segment fields are filled, and that target object slots are matched with content segments (col 14, lines 13-15). Brown further states, 'When the target object and content segment fields are filled,' (col 14, lines 13-15, therefore, it is inherent to Brown's disclosure that there is a limit on the target object slots and content segment fields that need to be filled. It is, therefore, inherent to Brown's disclosure that items are added to unfilled slots, that there are a predetermined number of slots, that these slots are originally empty, and that these slots need to be filled.

Brown further discloses that available records can be added to folders based on the type of information that that folder holds (col 9, lines 34-46; col 10, lines 31-40).

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Brown further discloses that different content segments can be targeted with different priorities (col 13, lines 28-36; col 3, lines 55-62).

Brown does not explicitly disclose that the folders, priority queues, and records are placed in hierarchical or ranked order where a higher folder or queue is more encompassing, broader or more general in scope than a lower folder or queue.

However, Herz discloses created ranked ordered lists of items of interest to a users (col 1, lines 25-25); creating collections, subcollections, clusters, and categories of items of gradually more focused content (col 3, lines 30-54); of targeting and matching content to the slots and hierarchical categories (col 5, lines 20-52); that groups are organized into general to gradually more specific groups, where each group has several categories within it (col 8, lines 5-21; Fig. 7); that different attributes can be determined and given different priorities for different categories (col 16, line 60-col 17, line 57); hierarchical clusters whereby an item is a member of all the clusters above it and each cluster beneath an item becomes more and more specific in scope (col 25, lines 10-67); routing information to particular categories in a prioritized way (col 35, lines 55-65); that content can be prioritized and matched (col 36, line 60-col 37, line 20); grouping targeted content into hierarchical clusters (col 16, lines 15-31); filling empty item slots for advertising (col 73, lines 28-34); that empty sets can be created and then filled (col 26, lines 21-24; col 50, lines 38-43); that the matching can be performed for advertising purposes (col 7, lines 29-51).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Herz's hierarchical clustering to Brown's advertisement and advertisement slot matching. One would have been motivated to do this because Herz's

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hierarchicial clustering allows Brown to organize his folders, sub-folders, categories, and priority queues in a manner that can better match items of different priorities.

Brown further discloses building queues according to predetermined rules (col 2, lines 1-5), filling content segment slots (col 14, lines 9-15), several different queues (col 14, lines 24-30), and that the queues are of different sizes (col 14, lines 29-36), and that queues can be empty (col 14, lines 34-36). Note that the queues can be different sizes because the queues are filled with the however many valid rules there are for that type.

Brown further discloses receiving priotity queues and then sending content segment play lists for those queues (col 1, lines 47-52; col 2, lines 14-28). Note that the priority queue is synonymous with an predetermined number of empty slots that need to be filled. Brown then returns a play list that has content filling the queue that was received. Therefore, Brown receives a prioritized list of slots that need to be filled. Brown returns content filling those slots. The empty queues that need to be filled can be of different sizes because several queues are received. The play lists that are returned fill those previously empty lists of slots.

Brown further discloses receiving different queues for different targets types, that these queues can each be defined with different rules, and that a play list filling each previously empty queue is returned (col 3, line 62-col 4, line 7).

Brown further discloses returning play lists of different number of content segments and the number of content segments to be returned is predefined (col 16, lines 63-68; col 17, lines 23-28). Therefore, the queue is received with a predetermined number of empty slots that need to be filled. The play lists is returned with a specific number of content segments that fill the previously empty slots.

Brown further discloses that the priority queues can be determined and defined by different criteria (col 27, lines 40-45).

Additionally, Herz discloses a list of target objects and an empty tree of target objects that need to be filled (Fig. 13a; Fig. 13b).

Herz further discloses hierarchical clustering where clusters and subclusters can be formed with common traits in each cluster and more specificity as clusters move down the tree of attributes with further specification (Fig. 7; col 25, lines 10-23). Herz further discloses iterations of organizing of target objects into further specification (col 25, lines 30-40). Herz further discloses finding target objects to fit target profiles (col 26, lines 1-20).

Brown further discloses that a slot can be filled by either an item of a first type having a corresponding characteristic or an item of a second type having a corresponding characteristic (col 17, lines 37-42), wherein each item slot is only filled by one item (col 17, lines 37-42).

Brown further discloses a priority play list (col 17, lines 39-43) with a predetermined number of empty slots (col 17, lines 23-29). Brown further discloses that each slots is filled only once (col 17, lines 53-55) and that an item of either a first or second type can fill the slot (col 17, lines 37-43; col 17, lines 40-46; col 17, lines 50-56). Note that there are different results lists for different types and that these different types are selected from in order to fill each slot in the priority play list.

4. Claims 1-7, 9-12, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (6,026,368) in view of Herz (6,029,195) in further view of Conley (6,434,745).

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Claim 1: Brown discloses a method for providing content and advertising information to a targeted set of viewers. Brown further discloses that content locations (websites) and site hosts can be targeted for the content (col 3, lines 45-62 and col 23, lines 18-26). Brown further discloses constructing item slot groups, each group having item slots, each item slot initially unfilled and able to be filled by an item (col 9, lines 15-52), allocating items of a first type to the item slots of the item slot groups that are unfilled by matching characteristics of the first type of items to characteristics of the item slot group, such that allocating an item to an item slot fills the item slot with the item (col 10, lines 24-40), allocating items of a second type over the item slots of the item slot groups that are unfilled, by matching characteristics of the second type of items to characteristics of the item slot groups, such that allocating an item to an item slot fills the item slot with the item (col 10, lines 24-40). Brown further discloses displaying the items that are available for a group (col 10, lines 35-40).

Brown further discloses that different and simultaneous queues are created for different types or categories, that these queues are formed based on rules and priorities, and also that these queues can be combined to form one main queue (col 17, lines 30-55; col 5, lines 40-49; col 3, line 62-col 4, line 15). Brown discloses that play lists can be constructed according to predetermined rules and definitions (col 2, lines 1-5; col 2, lines 15-28). Brown further discloses that sets of priority queues are generated (col 5, lines 56-60). The Merriam-Webster Online Dictionary (www.m-w.com) states that a set is, " 2 : a number of things of the same kind that belong or are used together." Hence, it is inherent to a set that a set has a limited number of items.

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Brown further discloses that a specific number of segments is predetermined and then returned in response to the reception of a playlist (col 17, lines 24-29).

Brown further discloses that the analyst creates and controls all aspects of what and how target objects will be targeted (col 13, lines 19-26) and that a variety of content segments are available to select to fill these target objects (col 13, lines 19-26).

Brown further discloses that there are folders for the different types of target entities and also folders of the available items to fill those target entities (col 13, line 65-col 14, line 12). Brown further discloses that content items can be selected to fill empty content slots (col 14, lines 9-12).

Brown further discloses that target object slots are filled and that content segment fields are filled, and that target object slots are matched with content segments (col 14, lines 13-15). Brown further states, 'When the target object and content segment fields are filled,' (col 14, lines 13-15, therefore, it is inherent to Brown's disclosure that there is a limit on the target object slots and content segment fields that need to be filled. It is, therefore, inherent to Brown's disclosure that items are added to unfilled slots, that there are a predetermined number of slots, that these slots are originally empty, and that these slots need to be filled.

Brown further discloses that available records can be added to folders based on the type of information that that folder holds (col 9, lines 34-46; col 10, lines 31-40).

Brown further discloses a predefined number of item slots (col 17, lines 24-29; col 14, lines 13-15).

Brown further discloses that different content segments can be targeted with different priorities (col 13, lines 28-36; col 3, lines 55-62).

Brown does not explicitly disclose that the folders, priority queues, and records are placed in hierarchical or ranked order where a higher folder or queue is more encompassing, broader or more general in scope than a lower folder or queue.

However, Herz discloses created ranked ordered lists of items of interest to a users (col 1, lines 25-25); creating collections, subcollections, clusters, and categories of items of gradually more focused content (col 3, lines 30-54); of targeting and matching content to the slots and hierarchical categories (col 5, lines 20-52); that groups are organized into general to gradually more specific groups, where each group has several categories within it (col 8, lines 5-21; Fig. 7); that different attributes can be determined and given different priorities for different categories (col 16, line 60-col 17, line 57); hierarchical clusters whereby an item is a member of all the clusters above it and each cluster beneath an item becomes more and more specific in scope (col 25, lines 10-67); routing information to particular categories in a prioritized way (col 35, lines 55-65); that content can be prioritized and matched (col 36, line 60-col 37, line 20); grouping targeted content into hierarchical clusters (col 16, lines 15-31); filling empty item slots for advertising (col 73, lines 28-34); that empty sets can be created and then filled (col 26, lines 21-24; col 50, lines 38-43); that the matching can be performed for advertising purposes (col 7, lines 29-51).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Herz's hierarchical clustering to Brown's advertisement and advertisement slot matching. One would have been motivated to do this because Herz's hierarchical clustering allows Brown to organize his folders, sub-folders, categories, and priority queues in a manner that can better match items of different priorities.

Brown does not explicitly state that the information is displayed in bar graph format.

However, Conley discloses advertising over the Internet, utilizing advertising categories and sub-categories, and reporting on advertising information (col 1, lines 30-57). Conley further discloses utilizing graphs, charts, and histograms for data reporting (col 9, lines 32-36).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Conley's complex graphical displays and histograms of data information to Brown's advertisement management method. One would have been motivated to do this because Brown discloses displaying the items available and Conley's complex graphical displays and histograms of data information is an obvious way of doing this that lends itself to easy interpretation of whether folders or queues are filled or not.

Brown further discloses building queues according to predetermined rules (col 2, lines 1-5), filling content segment slots (col 14, lines 9-15), several different queues (col 14, lines 24-30), and that the queues are of different sizes (col 14, lines 29-36), and that queues can be empty (col 14, lines 34-36). Note that the queues can be different sizes because the queues are filled with the however many valid rules there are for that type.

Brown further discloses receiving priority queues and then sending content segment play lists for those queues (col 1, lines 47-52; col 2, lines 14-28). Note that the priority queue is synonymous with a predetermined number of empty slots that need to be filled. Brown then returns a play list that has content filling the queue that was received. Therefore, Brown receives a prioritized list of slots that need to be filled. Brown returns content filling those slots. The

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empty queues that need to be filled can be of different sizes because several queues are received.

The play lists that are returned fill those previously empty lists of slots.

Brown further discloses receiving different queues for different targets types, that these queues can each be defined with different rules, and that a play list filling each previously empty queue is returned (col 3, line 62-col 4, line 7).

Brown further discloses returning play lists of different number of content segments and the number of content segments to be returned is predefined (col 16, lines 63-68; col 17, lines 23-28). Therefore, the queue is received with a predetermined number of empty slots that need to be filled. The play lists is returned with a specific number of content segments that fill the previously empty slots.

Brown further discloses that the priority queues can be determined and defined by different criteria (col 27, lines 40-45).

Additionally, Herz discloses a list of target objects and an empty tree of target objects that need to be filled (Fig. 13a; Fig. 13b).

Herz further discloses hierarchical clustering where clusters and subclusters can be formed with common traits in each cluster and more specificity as clusters move down the tree of attributes with further specification (Fig. 7; col 25, lines 10-23). Herz further discloses iterations of organizing of target objects into further specification (col 25, lines 30-40). Herz further discloses finding target objects to fit target profiles (col 26, lines 1-20).

Brown further discloses that a slot can be filled by either an item of a first type having a corresponding characteristic or an item of a second type having a corresponding characteristic (col 17, lines 37-42), wherein each item slot is only filled by one item (col 17, lines 37-42).

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Brown further discloses a priority play list (col 17, lines 39-43) with a predetermined number of empty slots (col 17, lines 23-29). Brown further discloses that each slots is filled only once (col 17, lines 53-55) and that an item of either a first or second type can fill the slot (col 17, lines 37-43; col 17, lines 40-46; col 17, lines 50-56). Note that there are different results lists for different types and that these different types are selected from in order to fill each slot in the priority play list.

Furthermore, once Brown is understood to disclose queues of different sizes with different amount of empty slots, it is inherent that Conley's histograms can graphically represent the situation of Brown's queues. For example, if Brown discloses a Queue 1 with 5 total slots, 3 filled, a Queue 2 with 7 total slots, 1 filled, and a Queue 3 with 9 total slots, 6 filled, then Conley's histograms would graphically display that situation through bars of different heights where the bars are filled in to different levels. It is inherent to histograms that they can display bars of different heights with appropriate shading within the bar to represent a situation. Therefore, if Brown discloses such a situation, then histograms can represent it.

Claims 2, 10, and 15: Brown, Herz, and Conley disclose a method as in claims 1, 8, and 13. Brown further discloses that each item comprises an ad and each item slot group comprises a web site, such that each item slot corresponds to an advertising space (col 4, lines 7-10; col 23, lines 18-24; col 17, lines 21-24).

Claims 3, 11, and 16: Brown, Herz, and Conley disclose a method as in claims 2, 10, and 15. Brown further discloses that the first type of items comprises member ads, and the second type comprises sponsor ads (col 5, lines 63-67).

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Claims 4, 12, and 17: Brown, Herz, and Conley disclose a method as in claims 1, 8, and 13. Brown further discloses a fill quota and filling the slots with a number of items equal to the quota (col 25, line 63-col 26, line 19 and col 9, lines 15-52).

Claim 5: Brown, Herz, and Conley disclose a method as in claim 4. Brown further discloses filling the items of the first type with the number of item slots of the item slot groups that are unfilled with the item equal to the quota proportionally as to the item slots unfilled of the item slot groups having characteristics matching the characteristics of the item (col 25, line 63-col 26, line 19; col 9, lines 15-52; and col 10, lines 24-40).

Claim 6: Brown, Herz, and Conley disclose a method as in claim 1. Brown further discloses that the second type has a quota, wherein allocating each of the items of the second type comprises filling the items of the slot groups that are unfilled with the items equal to the quota (col 25, line 63-col 26, line 19; col 9, lines 15-52; and col 10, lines 24-40).

Claim 7: Brown, Herz, and Conley disclose a method as in claim 6. Brown further discloses filling the items of the second type with the number of item slots of the item slot groups that are unfilled with the item equal to the quota proportionally as to the item slots unfilled of the item slot groups having characteristics matching the characteristics of the item (col 25, line 63-col 26, line 19; col 9, lines 15-52; and col 10, lines 24-40).

Claims 9 and 14: Brown and Herz disclose a method as in claims 8 and 13.

Brown further discloses displaying the items that are available for a group (col 10, lines 35-40).

Brown does not explicitly state that the information is displayed in bar graph format.

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However, Conley discloses advertising over the Internet, utilizing advertising categories and sub-categories, and reporting on advertising information (col 1, lines 30-57). Conley further discloses utilizing graphs, charts, and histograms for data reporting (col 9, lines 32-36).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Conley's complex graphical displays and histograms of data information to Brown's advertisement management method. One would have been motivated to do this because Brown discloses displaying the items available and Conley's complex graphical displays and histograms of data information is an obvious way of doing this that lends itself to easy interpretation of whether folders or queues are filled or not.

Response to Arguments

5. Applicant's arguments with respect to claim 1-21 have been considered but are not found persuasive.

Examiner notes that while specific references were made to the prior art, it is actually also the prior art in its entirety that is being referred to.

On page 20 of the Applicant's Amendment dated 11/7/03, Applicant states "such queues cannot be equivalent because the queues have no empty slots." Applicant further states, "that each queue has an identical number of item slots."

Applicant further states that Brown does not disclose a predetermined number of empty slots that needed filled for different categories where the number of empty slots can be different dependent upon the category.

However, Brown discloses building queues according to predetermined rules (col 2, lines 1-5), filling content segment slots (col 14, lines 9-15), several different queues (col 14, lines 24-30), and that the queues are of different sizes (col 14, lines 29-36), and that queues can be empty (col 14, lines 34-36). Note that the queues can be different sizes because the queues are filled with the however many valid rules there are for that type.

Brown further discloses receiving priority queues and then sending content segment play lists for those queues (col 1, lines 47-52; col 2, lines 14-28). Note that the priority queue is synonymous with an predetermined number of empty slots that need to be filled. Brown then returns a play list that has content filling the queue that was received. Therefore, Brown receives a prioritized list of slots that need to be filled. Brown returns content filling those slots. The empty queues that need to be filled can be of different sizes because several queues are received. The play lists that are returned fill those previously empty lists of slots.

Brown further discloses receiving different queues for different targets types, that these queues can each be defined with different rules, and that a play list filling each previously empty queue is returned (col 3, line 62-col 4, line 7).

Brown further discloses returning play lists of different number of content segments and the number of content segments to be returned is predefined (col 16, lines 63-68; col 17, lines 23-28). Therefore, the queue is received with a predetermined number of empty slots that need to be filled. The play lists is returned with a specific number of content segments that fill the previously empty slots.

Brown further discloses that the priority queues can be determined and defined by different criteria (col 27, lines 40-45).

Additionally, Herz discloses a list of target objects and an empty tree of target objects that need to be filled (Fig. 13a; Fig. 13b).

Herz further discloses hierarchical clustering where clusters and subclusters can be formed with common traits in each cluster and more specificity as clusters move down the tree of attributes with further specification (Fig. 7; col 25, lines 10-23). Herz further discloses iterations of organizing of target objects into further specification (col 25, lines 30-40). Herz further discloses finding target objects to fit target profiles (col 26, lines 1-20).

Brown further discloses that a slot can be filled by either an item of a first type having a corresponding characteristic or an item of a second type having a corresponding characteristic (col 17, lines 37-42), wherein each item slot is only filled by one item (col 17, lines 37-42).

Brown further discloses a priority play list (col 17, lines 39-43) with a predetermined number of empty slots (col 17, lines 23-29). Brown further discloses that each slots is filled only once (col 17, lines 53-55) and that an item of either a first or second type can fill the slot (col 17, lines 37-43; col 17, lines 40-46; col 17, lines 50-56). Note that there are different results lists for different types and that these different types are selected from in order to fill each slot in the priority play list.

Furthermore, once Brown is understood to disclose queues of different sizes with different amount of empty slots, it is inherent that Conley's histograms can graphically represent the situation of Brown's queues. For example, if Brown discloses a Queue 1 with 5 total slots, 3 filled, a Queue 2 with 7 total slots, 1 filled, and a Queue 3 with 9 total slots, 6 filled, then Conley's histograms would graphically display that situation through bars of different heights where the bars are filled in to different levels. It is inherent to histograms that they can display

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bars of different heights with appropriate shading within the bar to represent a situation.

Therefore, if Brown discloses such a situation, then histograms can represent it.

In regards to the Amendments dated 11/7/03 to the independent claims, Applicant's arguments are moot in light of the arguments herein and the enhanced rejection of the independent claims above.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Brown (title) and Herz (col 7, lines 35-40) are oriented to targeted advertising.

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

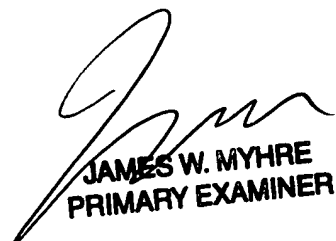
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (703)305-4687. The examiner can normally be reached on Mon- Fri, 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (703)305-8469. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.


11/19/03


JAMES W. MYHRE
PRIMARY EXAMINER